IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7619 OF 2006

Mrs. Kanta Satish Agarwal .....Petitioner.

V/s

Abhyudaya Co-operative Bank Ltd. & Others. .....Respondents.

Mr. M.S. Kumthekar for the Petitioner.

Mr. V.P. Malwankar, AGP for Respondents - State.

CORAM: **SMT. RANJANA DESAI** & **V.M.KANADE, JJ.**

DATE : **NOVEMBER 22, 2006**

P.C.

1. In this Writ Petition, the Petitioner has prayed that Respondents be restrained from taking coercive action pursuant to the execution proceedings initiated under the attachment order dated 12th September, 2006 to recover possession of the residential premises viz. Flat No.4 situated in Mercantile Apartment Co-operative Housing Society Ltd., Dr. C.P. Gidwani Road, Chembur, Mumbai 400 074.

2. We have heard the learned Counsel for the Petitioner. The learned Counsel for the Petitioner contended that the said Flat belongs to the Petitioner who is mother of Respondent No.4. He submitted that, in the circumstances,

it could not have been attached. We are unable to accept this submission. It is clearly observed in the order dated 15th July, 2005 passed by the Co-operative Court that the said Flat is offered as a collateral security to the Bank. This is borne out by the letter dated 12th February 1995 addressed by the Petitioner to the Managing Director, Abhyudaya Co-operative Bank Ltd., Parel Bombay. In view of this, present Petition cannot be entertained and it will have to be dismissed and is dismissed as such.

3. At this stage, the learned Counsel for the Petitioner states that the Petitioner is willing to give possession of the said Flat, however, Respondents may be directed to take symbolic possession and the Petitioner be given some time to vacate the suit premises. It is not possible for us to give such direction. However, if the Petitioner makes such application to Respondent No.2, the said application may be considered by Respondent No.2 in accordance with law.

4. A copy of this order duly authenticated by the registry be supplied to the Petitioner.

(SMT RANJANA DESAI, J.)

(V.M. KANADE, J.)